

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

LUTHER SANSON, JR. ET AL

CIVIL ACTION 3-04-2320

VERSUS

U.S. DISTRICT JUDGE ROBERT G. JAMES

CITY OF WEST MONROE ET AL

U.S. MAGISTRATE JUDGE JAMES D. KIRK

REPORT AND RECOMMENDATION

Before the court is defendants' motion to dismiss, Doc. 7, referred to me by the district judge for report and recommendation. Defendants show that suit was filed on November 12, 2004 but that service of process was not made until May 11, 2005, more than 120 days . Under FRCP Rule 4(m), service of process must be made within 120 days after suit is filed. If not made, the court has discretion to dismiss the suit or to order service.

Plaintiffs have not responded to defendants' motion nor provided any information to assist the court in the resolution of this issue. Importantly, plaintiffs have not shown good cause for their failure to promptly make service. Nevertheless, the court would likely only order that service be made, and here service has now been made. The court has discretion not to dismiss, even where plaintiff fails to show good cause. Thompson v. Brown, 91 F.3d 20 (5th Cir. 1996).

Although plaintiffs show little interest in this case (by not serving it promptly and by not responding to this motion) the court hesitates to dismiss where service has now been made.

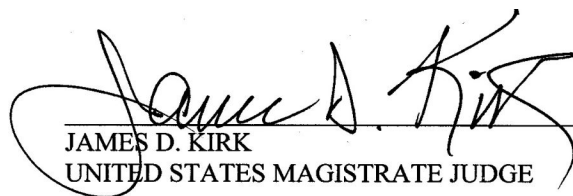
Therefore, IT IS RECOMMENDED that defendants' motion to dismiss be DENIED.

OBJECTIONS

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and Fed.R.Civ.P. 72(b), the parties have ten (10) business days from service of this Report and Recommendation to file specific, written objections with the clerk of court. A party may respond to another party's objections within ten (10) days after being served with a copy thereof. A courtesy copy of any objection or response or request for extension of time shall be furnished to the district judge at the time of filing. Timely objections will be considered by the district judge before he makes his final ruling.

FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN TEN (10) BUSINESS DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY, EXCEPT UPON GROUNDS OF PLAIN ERROR, FROM ATTACKING ON APPEAL THE UNOBJECTED-TO PROPOSED FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT JUDGE.

Alexandria, Louisiana, July 8, 2005.


JAMES D. KIRK
UNITED STATES MAGISTRATE JUDGE